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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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James J. Mallozzi

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EXAMINER

CAMPEN, KELLY SCAGGS

ART UNIT

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/701,945	<b>Applicant(s)</b> MALLOZZI, JAMES J.	
	<b>Examiner</b> Kelly Campen	<b>Art Unit</b> 3691	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) 21-29 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____.                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____.  | 6) <input type="checkbox"/> Other: ____.                          |

## DETAILED ACTION

### *Election/Restrictions*

Applicant's election without traverse of Group I, claims 1-20, in the reply filed on 3/17/08 is acknowledged.

Claims 21-29 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 3/17/2008.

### *Specification*

The abstract of the disclosure is objected to because it includes language which may be implied (see below, emphasis added). Correction is required. See MPEP § 608.01(b).

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

**The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.**

### *Claim Objections*

Claim 1-3, 9, 13 are objected to because of the following informalities: the format for the claim is confusing as there are no indentations for each element of the system. The way the

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claim is presented, it would appear the claim is entirely made up of a preamble without any parts to the system, at best, it appears it may be a single means claim. Appropriate correction is required.

In addition, in line 15, there appears to be a typographical error, “for allocates” should be amended to read --for allocating-- or the like. Applicant should correct.

Specifically as to claims 2 and 3, in line 2 of the claims, the phrase “a beneficial right a current value” appears to have a typographical error. It is unclear what applicant intends to claim. In addition, there appears to be a typographical error in line 1 of claim 2, ‘including a display to one” should be amended to --including displaying to one--. In line 1 of claim 3, "including a printer to one" should be amended to --including printing to one--.

Specifically as to claim 9, “wherein said the” in line 1 of the claim is confusing.

Specifically as to claim 13, “wherein said the” in line 1 of the claim is confusing.

In general, it appears the clarity of the claims would be improved if the claims were corrected for missing punctuation and for overall presentation (formatting--i.e. indentations). The indentions in claims 16 and 20 should be incorporated into claim 1 and any other claim directed to steps.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Specifically as to claim 1, it is unclear whether the claim is a system claim or a method claim. It appears to be initially directed to a system, yet there are no means claimed in the system. The claim appears to read more like a method claim. Applicant should correct and clarify.

In light of the above rejections under 35 USC 112 and the objections to the claims, the following rejections based on prior art is applied as best may be understood by the Examiner.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 6-14 and 16-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Hagan US 5864685).

Hagan discloses a data processing system, associated method and associated computer readable medium for managing a financial services configuration comprising one or more financial sub accounts established by a legal entity issuing instruments evidencing ownership having a beneficial right in the legal entity wherein one or more owners of a beneficial right has

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investment control of allocations over one or more selected funds within one or more financial sub accounts (col 1, line s50-col 2 line 20), said accounts managed by a software program that initializes a storage means that partitions data concerning the legal entity, the owners of a beneficial right and associated investment funds and stores investment funds information on the storage means in separate files regarding one or more investment funds (col. 5, lines 67) and calculating incremental increases or decreases in the value of the investment funds based upon market performance and allocating the results of the calculation of increases and decreases in the value of the investment funds (col 4 lines 50-65, col 6 lines 35-45), calculating the incremental income, expenses, and net realized gain or loss for the one or more investment funds on an aggregate basis (col 9, lines 20-30) and allocating the results on a percentage basis in respect of the selected funds of the owners of a beneficial right and distributes and stores the increment or decrement in fund assets in the financial sub accounts (see abstract, figures 2, 3a, 4, 5 col. 6, lines 35-60) [claims 1, 16, 20].

Specifically as to claim 2, displaying the current value, inherently, the value will be displayed prior to printing, see figure 4.

Specifically as to claim 3, printing the current value (see figure 4).

Specifically as to claim 4, the sub account includes a segregated account (figure 9).

Specifically as to claims 6 and 17, means to retrieve fund information and calculate the info for an owner and to display and provide the means to calculate (col 4, lines 50-67).

Specifically as to claims 7 and 18, investment funds are a family of funds with a death benefit (within the scope of the term “life insurance”) (see col 4, lines 50-67).

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Specifically as to claims 8 and 19, the investment funds have the protection element of a death benefit that assures the beneficiaries of particular values (see col. 4, lines 50-67).

Specifically as to claim 9, maintenance fee charges (see col 6, lines 10-15 as maintenance fees are inherent fees in investing).

Specifically as to claim 10, wherein maintenance fee charges are deductible (see above rejection for claim 9).

Specifically as to claim 11, an administrative charge, (see above rejection for claim 9).

Specifically as to claim 12, admin fee is deductible as an expense, (see above rejection for claim 11).

Specifically as to claim 13, contingent deferred sales charge (see above rejection for claim 9 as this is a matter of design choice).

Specifically as to claim 14, charges are deductible (see above rejection for claim 13).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

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2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 5 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hagan (US 5864685) as applied above and further in view of Schirripa (US 6275807).

Specifically as to claim 5, Hagan discloses a data processing system, associated method as applied in the above rejection but does not specifically disclose including a means to retrieve fund information and calculate that information for an owner of a beneficial right and aggregate on an owner by owner of a beneficial right basis and to display for a corresponding owner of a beneficial right a current value of the owner of a beneficial right separate account within the segregated account and provide the means to calculate the amount due in respect of a death benefit and a living benefit.

Schirripa discloses a financial system being used to calculate values for benefits.

It would have been obvious to one of ordinary skill in the art to include in the financial system of Hagan the ability to calculate the value as taught by Schirripa since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Specific lay as to claim 15, Hagan discloses a data processing system, associated method as applied in the above rejection but does not specifically disclose wherein the value of an instrument evidencing ownership is the sum of a financial units allocated to a sub account



corresponding to an underlying sub account fund multiplied by the unit value for an investor's sub account.

Schirripa discloses a financial system being used to calculate values for benefits.

It would have been obvious to one of ordinary skill in the art to include in the financial system of Hagan the ability to calculate the value as taught by Schirripa since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

#### ***Examiner's Note***

Examiner has cited particular columns and line numbers in the references as applied to the claims below for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant, in preparing the responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

#### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Leisher et al. disclose a system for forming an insurance program. Katcher discloses a sector selection investment option in a variable insurance product. Kilgour et al. disclose

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trading and processing of commercial accounts receivable. Elliot discloses a method of obtaining and allocating investment income based on the capitalization of intellectual property. Roberts et al. disclose a method for incurring the funding of a future liability of uncertain cost.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kelly Campen whose telephone number is (571)272-6740. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alexander Kalinowski can be reached on (571) 272-6771. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kelly Campen/  
Examiner, Art Unit 3691